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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Traction Technologies, Inc.

Serial No. 78215083

Robert M. Leonardi, Esq. for Traction Technologies, Inc.

John T. Lincoski, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Bucher, Rogers and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On February 14, 2003, Traction Technologies, Inc.
(applicant) filed an application to register SPR on the
Principal Register in standard character form for "drive
shafts and driveshaft assemblies for land vehicles,
associated hardware for use on land vehicles and parts
thereof, namely, shafts, yokes, universal joints, bearings,
end fittings, journal crosses, and driveshaft center

bearings" in International Class 12. Applicant claims both first use and first use in commerce on June 6, 1989.

The examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in view of current Registration No. 2,083,145, issued July 29, 1997, for SPR in special form, as shown below, for "piston rings" In International Class 7.¹



The registration specifies both a date of first use and first use in commerce of July 1, 1992.

The examining attorney issued a final refusal and applicant appealed. Applicant and the examining attorney filed briefs, and an oral hearing was held on July 12, 2005. For the reasons stated below, we affirm.

Section 2(d) of the Act precludes registration of an applicant's mark "which so resembles a mark registered in the Patent & Trademark Office . . . as to be likely, when used on or in connection with the goods

¹ Section 8 & 15 affidavits accepted and acknowledged, respectively, as of November 15, 2002.

of the applicant, to cause confusion . . .” Id. The opinion in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1977) sets forth the factors we may consider in determining likelihood of confusion. In this case, the two principal factors we must consider are the degree of similarity between the marks and whether the goods of the applicant and registrant are related. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Comparison of the Marks

Applicant argues that the marks differ, as follows: “Applicant’s mark is in plain block letters while the registered mark includes a distinctive type style and a distinctive design consisting of three open and interlocking circles which are suggestive of piston rings, Registrant’s goods.” Applicant’s Brief at 3. Applicant also argues that the examining attorney has “segregated the letters SPR from Registrant’s mark” rather than viewing the mark in its entirety. Id.

The examining attorney argues that, because applicant's mark is presented in typed² form in the application, it could be displayed in any lettering style, including the font shown in the cited registration. The examining attorney also argues that the letters SPR, as opposed to any design, are the dominant element of the registered mark. He states, "Here, the circles function principally as a carrier for the letters SPR and do not contain any readily apparent independent meaning or significance." Examining Attorney's Brief at 4.

To determine whether the marks are confusingly similar, we must consider the appearance, sound, connotation and commercial impression of each mark. Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Appearance - We conclude that the marks are highly similar in appearance because SPR is the only distinctive

² The examining attorney uses the term "typed form" to refer to applicant's presentation of its mark. The current Trademark Rules use the term "standard character" to refer to the equivalent form the rules had previously identified as "typed." See 37 C.F.R. § 2.52(a).

word or "literal" element in both marks. In fact, SPR is the only element in applicant's mark. Registrant's mark arguably includes a design consisting of three partial rings surrounding the letters. We agree with the examining attorney that any intent to suggest piston rings through this element is not readily apparent. Moreover, it is only applicant's assertion that the cited registrant even intended such a suggestion. On the other hand, the examining attorney's characterization of the "rings" as a "carrier" is more reasonable, at least in the absence of any evidence in the record that the "rings" would be perceived as more than a mere carrier. In any event, the design is subordinate to the letters. The examining attorney is also correct in his contention that, because applicant's mark is presented in standard character form, it could be presented in any type style, including a type style identical to that of the registrant.

While the marks must be viewed in their entireties, one feature of a mark may be more significant and the dominant feature in determining likelihood of confusion. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Here, however one may describe or characterize the design element, SPR is, without question, the dominant element in the registered mark. In re Dixie

Restaurants, Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). Accordingly, we conclude that the marks are highly similar in appearance.

Sound - In considering sound, of course, we are concerned with the word or literal elements only. In this connection, we agree with the examining attorney's observation that word elements are generally more significant because they can be recalled and used in calling for the goods or services. In re Apparel Ventures, Inc., 229 USPQ 225, 226 (TTAB 1986). The letters SPR are the only literal element in both marks. Therefore, we conclude that the marks are identical in sound.

Connotation - The significant "connotation" in both marks derives from the word or literal element SPR. Even if we accepted applicant's arguments that the design element in registrant's mark represents piston rings, a contention which has no support in the record, we do not believe this would affect the connotation to a significant degree because the design would then be non-distinctive. Thus, we conclude that, whatever connotation consumers may ascribe to the letters SPR, the marks have highly similar and potentially identical connotations.

Commercial Impression - The marks likewise convey the same overall commercial impression. Again, SPR dominates

the impression. As noted above, the "design" in no way detracts from SPR as the dominant contributor to the commercial impression. Therefore, the commercial impression engendered by the marks is highly similar.

Accordingly, we conclude that the marks are highly similar in appearance, sound, connotation and commercial impression. This conclusion is especially compelling here because both marks include the same three letters in the same order and, as the Federal Circuit has observed, marks composed of arbitrarily arranged letters are particularly likely to generate confusion. Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840, 1841 (Fed. Cir. 1990).

Comparison of the Goods

In arguing that the goods differ, applicant simply points out that its goods are "driveline" parts while the registrant's goods are "engine" parts. Applicant's Brief at 4. At the outset, we note that the focus of the inquiry is not the likelihood of confusion between the goods, but rather the source of the goods. In re Rexel Inc., 223 USPQ 830, 831 (TTAB 1984).

The examining attorney argues that the goods are related. In support of this position, the examining attorney provided records of several current registrations

claiming use of the registered marks which include both applicant's and registrant's goods in their respective identifications. For example, we note the following registrations in the record: Reg. No. 1,412,025 for the mark DO IT ONCE AND DO IT RIGHT for goods including "drivetrain components for land vehicles, namely driveshafts, axles" in Class 12 and "piston and piston rings for internal combustion engines" in Class 7; Reg. No. 1,472,147 for the mark MULTIPART and Design for goods including "piston rings" and "driveshafts" both in Class 12; Reg. No. 2,440,104 for the mark AMERAPARTS INTERNATIONAL and Design for goods including "piston rings" and "drive shafts" both in Class 12; and Reg. No. 2,440,200 for the mark BECK/ARNLEY WORLDPARTS for goods including "piston rings" in Class 7 and "drive shafts" in Class 12.

The examining attorney also placed in the record three registrations owned by Dana Corporation and Dana Technology, Inc. (Reg. Nos. 1,564,1666; 1,682,538 and 2,282,199) for three different design marks - each for goods including both "piston rings" and "drive shafts." At oral argument applicant confirmed that the owners of these registrations and applicant are related companies.

While these registrations are not evidence that these marks are in use, they are of some probative value and do

indicate that the goods of applicant and registrant are of a type which may emanate from the same source. In re TSI Brands Inc., 67 USPQ2d 1657, 1659 (TTAB 2002); In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993).

The examining attorney has also cited a number of cases where the Board has previously held various vehicle or engine parts to be related goods including: In re Delbar Products, Inc., 217 USPQ 859, 861 (TTAB 1981)(ULTRA for outside motor vehicle mirrors likely to be confused with ULTRA and Design for automobile parts, namely, pistons and pins, valves, water pumps, oil pumps, universal joints, timing gears, differential and transmission gears, axle shafts, hydraulic brake parts, automatic transmission repair kits and parts, engine bearings, and mechanical and hydraulic jacks); In re Red Diamond Battery Company, 203 USPQ 472, 473 (TTAB 1979)(RED DIAMOND for storage batteries likely to be confused with DIAMOND for pneumatic rubber automobile and vehicle tires). See In re Jeep Corporation, 222 USPQ 333, 334 (TTAB 1984)("It has frequently been found that the marketing by different parties of different types of vehicular parts under the same or similar marks is likely to cause confusion." (citations omitted)).

Accordingly, after considering all of the relevant evidence of record, we conclude that the goods of the applicant and registrant are related.

Other Factors

Trade Channels - At oral argument applicant had suggested some possible distinctions between its goods and those of the registrant based on potentially distinct channels of trade. However, we note that neither the application nor the registration include any restrictions as to the channels of trade. Therefore, we must consider the goods as described in the application and registration and assume that they travel in all trade channels appropriate for such goods. CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991). The evidence of record and prior cases indicate that the goods of applicant and registrant, both motor vehicle parts, could travel through the same or overlapping channels of trade. Accordingly, we conclude that the channels of trade of applicant and registrant are the same or overlapping.

Actual Confusion - Applicant has also argued that "the marks have co-existed for at least fourteen years" and that there has been no actual confusion. Applicant's Brief at 4. However, there is no indication in the record that

there has been a true opportunity for actual confusion to occur, as for example, if the record revealed that goods of both parties have actually been offered through the same channels of trade and were sold in the same retail outlets. Furthermore, we have consistently declined to accord any weight to representations regarding the absence of actual confusion in an ex parte proceeding where the registrant has no opportunity to respond. In re Kangaroos U.S.A., 223 USPQ 1025, 1026-27 (TTAB 1984). Therefore, we do not ascribe any weight to applicant's contention that there has been no actual confusion.

Conclusion

In conclusion, we have weighed all evidence related to the du Pont factors regarding likelihood of confusion presented in this case and determined that there is a likelihood of confusion between applicant's mark and the cited mark. The principal factors dictating this result are the fact that the marks are highly similar and that the goods of applicant and registrant, as identified, are related and travel in the same or overlapping channels of trade.

Decision: The refusal to register applicant's mark on the ground of likelihood of confusion is affirmed.